IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.10.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.1816 of 2002

Lakshmi .. Petitioner/Respondent/Tenant

vs.

1.M.V.Balamurali

2.Balasubramaniam .. Respondents/Petitioner/Landlord

Revision Petition filed against the order dated 21.10.2002, passed in R.C.A.No.17/2001 on the file of the appellate authority/Principal Sub-Judge, Salem, confirming the order dated 27.6.2001 passed in R.C.O.P.No.40/1994, on the file of the Rent Controller/I Addl. District Munsif, Salem.

For Petitioner : Mr.R.Subramanian,
Senior Counsel for M/s.Hemalatha.

For Respondent No.1 : Mr.M.Sathyanarayanan
No Appearance for R2

ORDER:

This Revision Petition has been filed against the order dated Revision Petition filed against the order dated 21.10.2002, passed in R.C.A.No.17/2001 on the file of the appellate authority/Principal Sub-Judge, Salem, confirming the order dated 27.6.2001 passed in R.C.O.P.No.40/1994, on the file of the Rent Controller/I Addl. District Munsif, Salem.

2.The tenant is the revision petitioner.

3.The 1st respondent as the landlord filed RCOP No.40/1994 against one R.Padmavathiammal, the original tenant and two others for evicting them from the petition premises on the grounds of wilful default, subletting, owner's occupation and demolition and reconstruction. According to the landlord/1st respondent herein, he is a goldsmith by profession and he purchased the petition schedle property on 17.8.1992 and informed the same to the said R.Padmavathiammal who was inducted as a tenant by the landlord's

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vendor. As the original tenant R.Padmavathiammal was chronic and wilful defaulter in paying the rent for a continuous period of 23 months amounting to a sum of Rs.5,175/-, she is liable to be evicted, on the ground of wilful default. It is the further case of the landlord that the original tenant sublet the property to 2nd and 3rd respondents without his permission and therefore they are liable to be evicted on the ground of subletting also. The landlord further stated that he is doing his profession of making various jewels out of gold in a rented shop and his landlord has been demanding him to vacate the shop and therefore the landlord was badly in need of the property leased out to the tenant for his own occupation. The landlord has also pleaded that the building is in a very dilapidated condition and it requires immediate demolition and reconstruction. Thus on these four grounds the landlord sought for eviction.

4.The 1st respondent in the RCOP filed a counter affidavit contesting the claim seriously by stating that no default has been committed by her and she has not sublet the building and 2nd and 3rd respondents are her own children. Regarding his requirement of the building for owner's occupation it was contended that the landlord is not doing any goldsmith work and he is only canvassing orders from gold jewellery shop owners and giving work to various goldsmiths on commission basis. Insofar as the requirement of the building for demolition and reconstruction is concerned, the original tenant contended that the building is in tiptop condition and the landlord does not have means to put up a new building.

5.The rent controller by order dated 27.6.2001 held that though the landlord sought the relief of eviction on the ground of wilful default, subletting, own occupation and demolition and reconstruction he has only proved the grounds of own occupation and demolition and reconstruction and therefore the RCOP was allowed on those two grounds only.

6.Aggrieved by the order of eviction dated 27.6.2001 passed by the rent controller, the tenants alone filed an appeal in RCA No.17/2001 and the appellate court by order dated 21.10.2002 held that the claim of the landlord for his bonafide occupation is true and therefore he is entitled to obtain an order of eviction against the tenants. But the appellate authority disagreed with the findings of the rent controller with regard to ordering eviction on the ground of demolition and reconstruction. The appellate authority found that the landlord did not give the undertaking under Sec.14(2)(b) of the Act that the work of demolishing any material portion of the building substantially commenced by him not later than one month and shall be completed before the expiry of three months and as no such undertaking was given, the appellate court held that the landlord is not entitled to eviction under Sec.14(1)(b) of the Act.

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The appellate authority has also held that the landlord has not established his means to put up a new building. Thus the appellate authority allowed the eviction petition only on the ground of own use and occupation. Aggrieved by the order of the appellate authority dated 21.10.2002, the tenants have filed the above Civil Revision Petition under Sec.25 of the Rent Control Act. It is relevant to note that the original tenant Padmavathiammal died pending appeal and respondents 2 and 3 in the RCOP are her son and daughter who are already on record in the RCOP itself.

7.Heard the learned Senior Counsel for the revision petitioner and the learned counsel for the 1st respondent. I have also gone through the documents relied on by them and the judgments referred to by them in support of their submissions.

8.The learned Senior Counsel for the revision petitioner contended that the appellate authority is wrong in ordering eviction on the ground of owner's occupation after holding that the requirement, and the eviction on the ground of demolition and reconstruction has not been proved. The learned Senior Counsel further contended that the landlord has not proved that he is running his business of goldsmith in a rental premises. He relied on the decision of this court reported in 2006(1) CTC 333 (Shahjahan v. Janath Ashraf Uduman) for the proposition that no concurrent findings are given by the courts below for evicting the tenant under Sec.10(3)(a)(iii) of the Act, the same could be interfered with in revision if the findings are not well founded.

9.The learned Senior Counsel for the revision petitioner has relied on an another decision of this court reported in 2006(1) CTC 620 (R.K.Nair v. Saramma George) for the proposition that the concept of bonafide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical.

10.Per contra, the learned counsel for the 1st respondent has not only supported the order of the appellate authority in ordering eviction on the ground of owner's occupation, but also found fault with the appellate authority for reversing the findings of the rent controller with regard to ordering eviction on the ground of demolition and reconstruction.

11.When this court put a question to the learned counsel for the 1st respondent as to how he could get the order of the appellate authority set aside in respect of the rejection of the eviction petition under the ground of demolition and reconstruction, when no revision was filed by the landlord, the learned counsel for the 1st respondent submitted that as per the decision of a Division Bench of this court reported in 1989-1-L.W. 155 (Durgai Ammal v. R.T.Mani), he could very well agitate the findings which are adverse to him in

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the present C.R.P. even though he has not filed a separate revision petition.

12.I have considered the rival submissions carefully.

13.The undisputed facts are that the rent controller as well as the appellate authority allowed the eviction petition filed by the landlord on the ground of landlord's own use and occupation of the petition schedule property. Therefore insofar as the landlord's own use and occupation are concerned, the findings are concurrent.

14.The learned counsel for the 1st respondent/landlord relied on the decision of this court reported in 2006(1)M.L.J.322 (Nair, R.K. v. Saramma George) and 2006(2) M.L.J. 711 (M.Gangabai Ammal v. M.Saraswathamma) to contend that when both the courts below concurrently came to the conclusion that the claim of the landlord is bonafide, the revisional jurisdiction of this court becomes restricted. But the learned Senior Counsel for the revision petitioner/tenant contends that when the concurrent findings are not well founded, then this court can certainly interfere with those findings. The learned Senior Counsel relies on the decision of this court reported in 2006(1) CTC 333 (cited supra) to this effect.

15.In the decision reported in 2006(1) CTC 333 (cited supra), this court held that two main ingredients are to be satisfied under Sec.10(3)(a)(iii) namely, (1) the landlord for whom the building is required, must be carrying on business and (2) they should not own any building of their own in the city or town. As the 1st ingredient was not satisfied in that case, this court came to the conclusion that the concurrent findings of the authorities below could be interfered with.

16.In the case on hand, the rent controller has referred to Ex.A6 certificate which is a certificate of recognition granted to the landlord certifying that he is a goldsmith by profession. P.Ws.2 and 3 deposed before the rent controller that the landlord is a goldsmith and he is making jewels on orders that too in and from a rented premises. Therefore on the basis of Ex.A6 and the evidence of P.Ws.2 and 3, the rent controller came to the conclusion that the landlord is doing business in the rented premises and he is entitled to have the tenant vacated on the ground of own use and occupation.

17.The appellate authority has also gone into this aspect and after re-appreciating Ex.A6, which is a certificate of recognition issued by the Superintendent of Central Excise, authorising him as a goldsmith and Ex.A7 which is the life member subscription card issued by the Salem Gold and Silver Employees Association, came to the conclusion that the landlord is a recognised goldsmith. The appellate authority has also gone into the evidence of P.Ws.2 and 3

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and after finding that their evidence is reliable held that the landlord requires the petition schedule property for his own use and occupation. The revision petitioner himself in the counter filed in RCOP No.40/1994 admitted that the landlord is canvassing orders from gold jewellery shop owners, who sell gold ornaments and giving the work for various small goldsmiths on commission basis. In such circumstances both the authorities below have concurrently come to the conclusion that the landlord requires the building bonafidely for his own use and occupation and this court under Sec.25 of the Act, 1960 cannot interfere with those findings by re-appreciating the evidence as if it is an appellate court.

18.Even in the decision relied on by the learned Senior Counsel for the revision petitioner reported in 2006(1) CTC 620 (cited supra) to contend that the question of landlord's bonafide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical, this court held that the finding regarding the bonafide need is always a question of fact and when both the authorities below have concurrently come to the conclusion that the claim of the landlord is bonafide, the revisional jurisdiction of this court becomes restricted.

19.The learned Senior Counsel for the revision petitioner contended that the appellate authority itself has found that the requirement of the building by the landlord for demolition and reconstruction is not bonafide and in such circumstances the eviction ought not to have been passed on the ground of landlord's use and occupation as both these grounds are mutually exclusive and are inconsistent.

20. But the learned counsel for the 1st respondent submitted that they are mutually exclusive and they are complimentary to each other by relying on the decision of this court reported in 1989-II-M.L.J. 469 (Nandan v. Kamaladevi), 1997-3-L.W.731 (Periaswamy Nadar, v. T.M.P.N.Singaravel) and 1999-III-M.L.J. 194 (Rajendran v. Kuthurathullah).

21. All the above decisions make it very clear that the two reliefs are mutually exclusive and once it is established that the requirement of the landlord is bonafide a mere reference to Sec.14 (1)(b) of the Act will not deny the remedies available to the landlord. Therefore I have to necessarily hold that the revision petitioner is liable to be evicted under Sec.10(3)(a)(iii) of the Act.

22.When the landlord shows a prima facie case it is open to the rent controller to draw a presumption that the requirement of the landlord is bonafide and it is not for the tenant to dictate terms to the landlord as to how-else he can adjust himself without getting

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possession of tenanted premises. A Reference can always be made to the decision of the Hon'ble Supreme Court reported in 2002(5) SCC 397 (Joginder pal v. Naval Kishore Behal) wherein the Hon'ble Supreme Court has held that although the rent control statutes lean in favour of the tenant, court must lean in favour of the landlord while interpreting the provisions which take care of the landlord's interest. Under Sec.10(3)(a)(iii) of the Act, a landlord can take possession of his property if he establishes that he bonafidely requires the building for his own use and occupation. In the case on hand, the landlord has proved before both the authorities that he is in need of the building and such finding given by both the authorities below that the landlord needs the building for his own occupation cannot be easily interfered with by this court.

23.The learned counsel for the 1st respondent contends that the appellate authority is wrong in reversing the findings of the rent controller that the landlord requires the building for demolition and reconstruction.

24. In view of the decision of the Division Bench of this court reported in 1989-I-L.W.155 (cited supra), this court permitted him to argue against these findings within the ambit of powers exercisable under Sec.25 of the Act.

25. The learned counsel for the 1st respondent submitted that in view of the decision of this court reported in 2006(2) M.L.J. 524 (cited supra) and the decision of the Hon'ble Supreme Court reported in 2006(2) CTC 615 (cited supra), the findings of the appellate authority insofar as rejecting the RCOP under Sec.14(1)(b) of the Act is wrong.

26. The appellate authority rejected the RCOP under Sec.14(1)(b) of the Act on two grounds namely, the undertaking required under Sec.14(2)(b) of the Act was not given by the landlord and (2) he has not established before the court his means to demolish and reconstruct the building.

27. In 2006(2) CTC 615 (cited supra), the Hon'ble Supreme Court held that raising funds for erecting a structure in a commercial centre is not at all difficult when large number of builders, financiers as well as banks are willing to advance the funds to erect a new structure in a commercial area.

28. In the case in hand, the rent controller after going through Exs.C1 and C2 which are Commissioner's report and plan and Exs.A9 and A10 which are the approval of the Salem Municipal Commissioner for the proposed construction came to the conclusion that the landlord has means to reconstruct the building and he has also taken some positive steps towards reconstruction. Therefore in

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the light of the above Supreme Court judgment reported in 2006(2) CTC 615 (cited supra) and also in the light of the change in scenario in this country where loans are easily available for a property owner to put up a new construction, I am of the view that the appellate authority is wrong in holding that the landlord has not established his means to put up a new construction.

29. Coming to the question of the landlord's not giving an undertaking under Sec.14(2)(b) of the Act, it is true that if no such undertaking is given it is not in consonance with the provisions of the Act. But what is to be decided is whether not giving an undertaking is a rectifiable error or not. This court has already held in 2006(2) M.L.J. 524 (cited supra) that it is only an error and the landlord can be given an opportunity to rectify the error and file an undertaking before the order of eviction is passed and the same can be done in appeal or revisional stage.

30. I am in respectful agreement with the above decision and if the above said decision is applied to the facts of this case, the appellate authority is certainly wrong in not giving an opportunity to the landlord to rectify the error by giving an undertaking before him, instead of rejecting the prayer on the ground that no undertaking was given. Therefore now I am giving an opportunity to the 1st respondent/landlord to give an undertaking under Sec.14(2)(b) of the Act before the order of eviction is implemented.

31. For the reasons stated above, I find no merits in the C.R.P. and the same is dismissed.

32. The order of the appellate authority is confirmed insofar as the landlord's own use and occupation is concerned and the order of the appellate authority in rejecting the eviction petition under Sec.14(1)(b) of the Act is set aside and the order of the rent controller is restored.

33. In the result, the 1st respondent is entitled to evict the revision petitioner on both the grounds of owner's use and occupation and demolition and reconstruction. C.M.P.No.18961/2002 is also dismissed. No costs.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Appellate Authority, (Principal Sub-Judge), Salem.
(with records)

2.The Rent Controller, (1st Addl. District Munsif), Salem.

3.The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr. R. Subramanian, Advocate SR No. 49102

+ 1 cc to Mr. M. Sathyanarayanan, Advocate SR No. 58520

AKM(CO)
SR/16.12.2006

order,
C.R.P.(NPD)1816/02.

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